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10 Attorneys for Defendant

11 JOHNSON & JOHNSON CONSUMER INC.

12 (erroneously sued as JOHNSON & JOHNSON
13 CONSUMER, INC.)

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

16 ELIZABETH BODLE,

17 Plaintiff,

18 v.

19 JOHNSON & JOHNSON CONSUMER,
20 INC.

21 Defendant.

22 Case No. 3:21-CV-07742-EMC

23 **[PROPOSED] ORDER GRANTING
DEFENDANT JOHNSON & JOHNSON
CONSUMER INC.'S MOTION TO DISMISS
ACTION UNDER FED. R. CIV. P. 41(b)**

24 *[Filed Concurrently With Notice of Motion and
Motion to Dismiss Action Under Fed. R. Civ. P.
41(b); Memorandum of Points and Authorities in
Support Thereof]*

25 Judge: Hon. Edward M. Chen

26 Hearing Date: June 9, 2022

27 Hearing Time: 1:30 p.m.

28 Courtroom: 5

29 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

30 The Motion to Dismiss Action pursuant to Rule 41(b) of the Federal Rules of Civil
31 Procedure of Defendant Johnson & Johnson Consumer Inc. ("JCI") regularly came on for hearing
32 before this Court on June 9, 2022. Plaintiff and JCI were represented by counsel.

33 After reviewing and considering the Motion and papers filed in support thereof, the
34 Opposition, and Reply, the arguments of counsel at the hearing, and all other matters presented to
35 the Court, IT IS HEREBY ORDERED THAT:

37 **[PROPOSED] ORDER GRANTING DEFENDANT JOHNSON & JOHNSON CONSUMER INC.'S
38 MOTION TO DISMISS ACTION UNDER FED. R. CIV. P. 41(b)**

39 Case No. 3:21-CV-07742-EMC

- (1) The Court GRANTS JJCI's Motion to Dismiss Action;
- (2) Plaintiff failed to file a Second Amended Complaint within 60 days of the Court's Order at the February 24, 2022 hearing and in its Minute Entry Order (Dkt. 28);
- (3) The following five factors set forth in *Yourish v. Cal. Amplifier*, 191 F.3d 983 (9th Cir. 1999), weigh in favor of dismissal of this action, with prejudice, under Fed. R. Civ. P. 41(b):
 - (a) The first factor, the public's interest in expeditious resolution of this litigation, strongly supports dismissal because Plaintiff has had ample time to plead plausible claims against JJCI, but has not done so;
 - (b) The second factor, the Court's need to manage its docket, also strongly supports dismissal because Plaintiff's failure to file a Second Amended Complaint within the 60 days after the February 24, 2022 hearing has caused this action to come to a halt, allowing Plaintiff—not this Court—to control the pace of the docket;
 - (c) The third factor, the risk of prejudice to Defendant JJCI, strongly favors dismissal because Plaintiff has provided no reason for her failure to timely file a Second Amended Complaint;
 - (d) The fourth factor, the public policy favoring disposition of the case on its merits, does not weigh against dismissal because Plaintiff has had ample opportunity to plead plausible claims against JJCI, but has failed to do so, either because Plaintiff cannot or because she has chosen not to further amend her complaint; and
 - (e) The fifth factor, the availability of less drastic alternatives, also does not weigh against dismissal because Plaintiff was well aware of the deadline to file a Second Amended Complaint but did not do so, nor has Plaintiff requested any lesser relief to maintain her action.

1 IT IS SO ORDERED.
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3 DATED: May 6, 2022
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